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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THE CITY OF PASCO,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 84-339

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of an NPDES waste discharge permit and order by the Department of Ecology establishing an effluent limitation on settleable solids from this City's water treatment plant came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk (presiding), Gayle Rothrock, and Wick Dufford, Members, convened at Lacey, Washington, on May 21, 1985. Respondent Department of Ecology elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by Pasco City Attorney, Greg A. Rubstello. Respondent State Department of Ecology was represented by

1 Charles W. Lean, Assistant Attorney General. Gene Barker provided
2 recording services.

3 Witnesses were sworn and testified. Exhibits were examined.
4 Pre-hearing Briefs were filed by the City Attorney on May 21, 1985.
5 From testimony heard and exhibits examined, the Pollution Control
6 Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 This matter arises because the Department of Ecology (DOE) has
10 directed the City of Pasco to treat the filter backwash wastewater
11 generated by the City's water filtration plant prior to its discharge
12 into the Columbia River.

13 II

14 Pasco acquires water for domestic consumption from the Columbia
15 River. Raw water is pumped directly from the river to a filtration
16 plant where suspended and colloidal matter is removed such that
17 turbidity can be reduced to drinking water standards. This removal is
18 accomplished by a process of flocculation, sedimentation, and
19 filtration. Part of the floc and solids settles out. Most of the
20 remaining floc and suspended matter is captured in large filters which
21 trap minute particles. These filters are backwashed with chlorinated
22 water periodically each day causing the solids collected in the
23 filters to be returned to the river in untreated waste streams.

24 Twice each year the settlement basins are cleaned of accumulated
25 settled sediments.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339

1 III

2 On November 10, 1984, DOE reissued a National Pollutant Discharge
3 Elimination System (NPDES) Permit requiring treatment prior to
4 discharge of filter backwash wastewater from the Pasco water
5 filtration plant to the Columbia River. That permit included special
6 condition Sl. which defined the effluent limitations as follows:

7 Beginning on the date of issuance and lasting through
8 the expiration date of this permit, the permittee is
9 authorized to discharge filter backwash waters and
presedimentation wash waters which have been settled,
subject to the following limitations and testing
schedule:

10 <u>Parameter</u>	<u>Limitations</u>
11 Flow	1.2 mgd - daily maximum
12 Settleable Solids	0.1 ml/L* - daily maximum
13 pH	within the range 6.0-9.0

14 *The effluent limitations are net values allowable
15 above that of intake water. The daily maximum is
defined as the greatest allowable value for any
calendar day.

16 On November 19, 1984, DOE issued Order No. DE 84-681, requiring
17 construction of a treatment facility in order to meet the effluent
18 limitations. This Order provided that the City was to:

- 19 a. Submit Plans and Specifications for construction
20 of the facility to the WDOE by June 1, 1985.
- 21 b. Begin construction of facilities within sixty
22 (60) days after approval of Plans and
Specifications.
- 23 c. Complete construction and place the facility in
operation by January 1, 1987.

24 IV

25 Feeling aggrieved by this Order and permit, appellant appealed to

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339

1 this Board on December 24, 1984.

2 V

3 No problem was identified with meeting the "flow" and "pH"
4 limitations. However, Pasco's existing water plant does not comply
5 with the limitation for "settleable solids" set forth in the permit.
6 Though this limitation deals with "net values allowable above that of
7 intake water," the standard is based on the concentration per liter.
8 Since the backwash water contains substantially more solids per liter
9 than the huge amount of intake water drawn from the river, additional
10 treatment is required for the smaller volume discharge to meet even a
11 concentration higher than inflow. This means that on a volume of
12 solids basis, the City is required to return much less to the river
13 than it takes out.

14 VI

15 The City does not want to go to the time and expense of treating
16 its filter backwash under these circumstances. Testimony indicated
17 that to meet the "settleable solids" limit, Pasco would need to
18 acquire land and construct two large settling ponds and necessary
19 piping. A site also would be needed for disposal of the sludge. The
20 cost of the system was roughly estimated at \$500,000 of which 40
21 percent might be available as a grant from the state.

22 VII

23 The facility required is essentially just an upgrade from no
24 treatment to primary treatment. The engineering technology involved
25 has been available for many years and is well known.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339

1 No evidence was presented indicating that the cost of the facility
2 would in any way be unusual for a system of its kind or that any local
3 peculiarities would lead to significantly increased costs or any other
4 difficulties. There was no indication that building the facility
5 would be beyond the City's financial capacity.

6 VIII

7 Appellant Pasco by requests for admission and offers of evidence
8 has attempted to have admitted various matters concerning the effect
9 of the plant's discharge on receiving waters.

10 The parties agree and we find that neither the present discharge
11 nor the discharge from the new facility presents a threat of violating
12 receiving water quality standards or of appreciably degrading existing
13 water quality.

14 Beyond this, we have excluded all material on water quality and
15 have not considered it in reaching our decision. See Conclusion of
16 Law No. II.

17 IX

18 The 0.1 ml/L limitation for settleable solids has been imposed by
19 DOE on other water treatment plants in this state.

20 X

21 Any Conclusion of Law which is deemed a Finding of Fact is hereby
22 adopted as such.

23 From these Findings of Fact, the Board comes to these
24
25

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these parties and these issues.
4 Chapters 43.21B, 90.48 and 90.52 RCW.

5 II

6 Chapter 90.48 RCW, the State Water Pollution Control Act, provides
7 the basic framework for the program of water pollution control in
8 effect in this state including permit requirements and enforcement
9 powers. The level of treatment which must be imposed is, however,
10 best stated in a section of a companion statute, namely RCW 90.52.040.

11 In the administration of the provisions of chapter
12 90.48 RCW, the director of the department of ecology
13 shall, regardless of the quality of the water of the
14 state to which wastes are discharged or proposed for
15 discharge and regardless of the minimum water quality
16 standards established by the director for said
17 waters, require wastes to be provided with all known,
18 available and reasonable methods of treatment prior
19 to their discharge or entry into waters of the
20 state. (Emphasis added.)

21 We conclude that, except where water quality standards are violated or
22 water quality degradation is a factor, the matter of water quality is
23 irrelevant to the question of the level of treatment a discharger must
24 provide. See RCW 90.54.020(3)(b). The standard is primarily a
25 technology standard.

26 III

27 The record of this case does not establish that condition SI.,
imposed by DOE, here exceeds the "all known, available and reasonable
methods of treatment" formulation. There is no question that the

1 primary treatment required here is both "known" and "available." We
2 conclude that the technology involved is also "reasonable," as that
3 term is used in the water pollution laws of this state.

4 IV

5 In addition to the substance of the effluent limitation, appellant
6 asserts a number of legal issues:

7 (1) The NPDES permit authority does not allow the Department to
8 require the City to remove the solids from the backwash water before
9 it re-enters the river.

10 (2) "Discharge of a pollutant" does not occur when the City
11 returns suspended solids to the river in plant backwash.

12 (3) The effluent limitations are unenforceable because they were
13 not adopted by a rule in the Washington Administrative Code.

14 (4) DOE is prohibited from the enforcement of the appealed order
15 and permit until such time as the agency has promulgated a variance
16 procedure; and

17 (5) DOE is unable to enforce effluent limitations on water
18 treatment facilities because the United States Environmental
19 Protection Agency (EPA) has not adopted effluent limitations on these
20 types of sources.

21 V

22 Appellant's first two issues concern whether DOE has authority to
23 condition Pasco's water plant discharge as it has.

24 The state statute is designed to empower DOE to carry out the
25 permit program of federal law, as well as pre-existing permit program

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339

1 under state law. RCW 90.48.260, 262.

2 The federal and state definition of "pollutant" includes "rock,"
3 "sand" and (as distinct from sewage) "municipal waste." Pasco's
4 filter backwash discharge contains material within this definition.
5 33 USC 1362(6), WAC 173-220-030(6).

6 Appellant, however, points out that the federal and state
7 definition of the phrase "discharge of a pollutant" calls for an
8 addition of a pollutant to receiving waters 33 USC 132 (12), WAC
9 173-220-030(12). Merely returning to the river material which was
10 taken out of it does not, it is argued, meet this definition.

11 Such an argument was made and rejected in Pedersen v. Department
12 of Transportation, 25 Wn. App. 781, 611 P.2d 1293 (1980). After
13 analysis, the court there concluded that the word "addition" for the
14 purposes of the requirement to obtain a permit means merely a
15 "discharge" into navigable waters, not an "increase" in the amount of
16 a pollutant introduced into the system. Both the federal and state
17 schemes require a permit if any pollutant from a point source is
18 discharged to navigable waters. 33 USC 1342, WAC 173-220-020.

19 Given the applicability of the permit requirement to Pasco's
20 filter backwash discharge under the definitions, the issue of DOE
21 authority becomes merely the issue of the state's power to impose,
22 within the permit, the substantive limitations which were imposed here.

23 Notwithstanding the existence of a federal statute, the state
24 continues to have power to impose more stringent requirements than
25 federally demanded. 33 USC 1370.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339

1 The state settleable solids limit at issue gives credit for
2 pollutants in the intake, but does this on a concentration per liter
3 rather than on a volume of solids basis. Even if federal law calls
4 for a less restrictive approach to effluent limitations in this
5 context, state law has not been violated.

6 We conclude that the state is not obliged to restrict its
7 limitations to discharges which add pollutants to the source in the
8 volumetric increase sense appellant argues for. State law does not
9 require consideration of the contents of the intake water or whether
10 the discharge volumetrically increases the waste load of the receiving
11 water. The technology standard of RCW 90.52.040 applies to all wastes
12 which are discharged or proposed for discharge. This technology
13 standard applies, through the permit process, in the present instance.

14 VI

15 Appellant's issues (3) and (4) are resolved by a consideration of
16 the process involved in the instant appeal.

17 On the one hand, appellant asserts the effluent limitation for
18 settleable solids should have been adopted by rulemaking. On the
19 other hand, appellant maintains that the state should have established
20 a variance procedure.

21 Functionally, the case-by-case establishment of effluent
22 limitations by permit accomplishes the very purposes and provides the
23 very safeguards for which appellant argues.

24 The availability of appeal to this Board provides a trial-type
25 hearing to test permit requirements against the individualized

1 situation. Whenever site-specific factual peculiarities dictate a
2 different limitation than one the state has imposed, such limitation
3 is unreasonable and cannot be upheld under the "all known, available
4 and reasonable methods of treatment" standard.

5 The net effect is the same as that provided by EPA with its
6 variance scheme which applies to dischargers which are "fundamentally
7 different."

8 Under RCW 34.04.010(2) a "rule" is a directive of general
9 applicability, applying across the board to all within a given
10 category. DOE's water treatment plant effluent guidelines, not having
11 been adopted as a rule, do not have this automatic legislative
12 application. Instead, they apply only when specifically written into
13 a permit or order. Thus, the limitations suggested in the guidelines
14 are subject to adjudication in every instance where they are imposed.
15 There is no requirement in state law for individually implemented
16 limitations to be legislatively adopted in the first instance.

17 We conclude that the effluent limitations in Pasco's permit are
18 enforceable even though not adopted by rule. See State v. Crown
19 Zellerbach, 92 Wn.2d 894, 602 P.2d 1172 (1979). In addition, we find
20 no inconsistency with the federal scheme in DOE's process,
21 notwithstanding the failure to provide for a variance procedure. See
22 RCW 90.48.260. The federal statute does not require states to
23 establish a system of variances.

VII

Federal Law does not restrict the imposition of state-based effluent limitations to those situations where category-wide limits have been adopted by federal rule. Federal rules in this area merely describe minimums. States may be more stringent. 33 USC 1701. Thus, where the federal authorities have not acted, the states may still do so. See WAC 173-220-130(1)(b)(v).

We, therefore, reject the final legal argument of appellant.

VIII

Because of the time consumed by negotiations of the parties and by this appeal, the time frames in Department of Ecology's Order (DE No. 84-681) should be adjusted to allow appellant a reasonable period within which to complete the planning and construction phases of the required project.

IX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

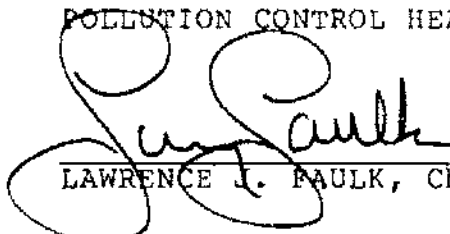
From these Conclusions of Law the Board enters this

ORDER

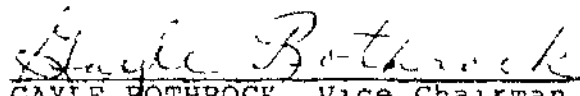
Subject to adjustment pursuant to Conclusion of Law VIII above,
Department of Ecology order No. 84-681 is affirmed.

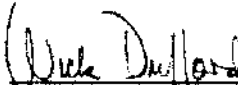
DONE THIS _____ day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD

 9/23/85

LAWRENCE J. PAULK, Chairman

_____
GAYLE BOTHROCK, Vice Chairman

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WICK DUFRORD, Lawyer Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB NO. 84-339